

**IN THE HIGH COURT OF FIJI**  
**AT SUVA**  
**CRIMINAL JURISDICTION**

**Crim. Case No: HAC 234 of 2014**

**STATE**

**v.**

**MITIELI WAIVONO**

**Counsel:** Ms. Tivao for State  
Mr. Waqainabete S., Mr Ali. S for Accused

**Hearing:** 25<sup>th</sup>, 26<sup>th</sup> and 27<sup>th</sup> January 2017

**Summing Up:** 30<sup>th</sup> January 2017

**Judgment:** 06<sup>th</sup> February 2017

**Sentence:** 07<sup>th</sup> February 2017

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**SENTENCE**

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1. Mr. Mitieli Waivono, you have been found guilty and convicted by this court for eight counts of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree which carries maximum penalty of life imprisonment.
2. It was proved at the conclusion of the hearing, that you forcefully had sexual intercourse with the victim on eight separate occasions. You have asked her to drop your son's lunch box. While she came to drop the lunch box at your house, you have forcefully pulled her inside the sitting room and had sexual intercourse without her consent.
3. Rape is the worst form of sexual assault. It invades the person's physical and psychological freedom, causing myriad of heartbreaking trauma not only in the victim, but sometimes in the people who are close and dear to the victim. Rape of women has become


a disturbing social concern in our society as it has escalated in significant numbers. Therefore, the sentencing courts must adopt deterrence approach in punishing the offender of this nature, in order to deter offenders or other persons from committing offences of the same or similar nature.

4. Accordingly, it is my opinion that the purpose of this sentence must be founded on the principle of deterrence and protection of the community. Offenders of this nature must be punished with severity in order to demonstrate that the court of law has no tolerance or sympathy for such offenders.
5. The tariff for the offence of rape involving an adult victim ranges from seven (7) years to fifteen (15) years of imprisonment period.
6. The victim states in the Victim Impact Report filed by the prosecution that this crime adversely effected in her life. You have employed substantial force on her. You have pulled her into the house and forcefully held her, not letting her to escape. You have threatened her that you will do something to her and her family if she tells anyone.
7. Having considered the serious nature of this crime and the level of harm and culpability of the offending, I select eleven (11) years as the starting point for each counts of rape.
8. It was proved at the conclusion of the hearing that you have unleashed this disgraceful sexual exploitation on the victim when she was not in a position to seek any assistance or find a way to escape. She was alone at home when you called her to your house. You found an opportunity and then planned to commit this crime when the victim was vulnerable without any prospects of escaping or obtaining any assistance. You are related to the victim as her uncle and lives in a house that is very close to her house. You were forty-five (45) years old at the time of this offending and the victim was eighteen (18) years old. With your relationship with the victim and your age, you were in a position of elderly respected relative in her life. By committing this crime, you have breach the trust that she had in you as an elderly relative. I consider these facts as aggravating circumstances of this offending.

9. The learned counsel for the defence, submitted in mitigation your family and personal circumstances, which has no significant mitigatory value in offences of this nature (**Anand Abhay Raj vs State [2014] FJSC 12; CAV0003.2014 (20 August 2014)**) The learned counsel further submitted in mitigation that you are a first offender. However, the report of the previous convictions filed by the prosecution suggests otherwise. The report states that you have adversely recorded with twenty (20) previous convictions. Two of them have been reported within the last ten years. Hence, I do not find you are eligible for any substantive discount for your previous good character.
10. Having considered the above discussed aggravating circumstances, I increase two (2) years to reach interim period of thirteen (13) years. I do not find any substantive ground for your mitigation as submitted by your counsel. However, considering your age, I reduce six months, reaching the final sentence of twelve (12) years and six (6) months imprisonment period.
11. In view of your age and the opportunity for rehabilitation, I find ten (10) years of non-parole period would serve the purpose of this sentence.
12. Accordingly, I sentence you for twelve (12) years and six (6) months imprisonment for each of these eight counts of Rape contrary to Section 207 (1) and (2) (a) of the Crimes Decree. Furthermore, you are not eligible for any parole for a period of ten (10) years. All the sentences to be served concurrently.
13. Taking into consideration of the period of two (2) months and three (3) weeks that you have spent in remand custody prior to the sentencing, I consider that you have already spent three (3) months of the above imposed sentence. Hence, the remaining period that to be served is
  - **The head Sentence : Twelve (12) years and three (3) months,**
  - **Non-Parole Period ; Nine (9) years and nine (9) months,**

14. Since you are related to the victim, I am satisfied that there are sufficient grounds to consider making an order under the Domestic Violence Decree. I accordingly make a permanent domestic violence restraining order against the accused with standard non-molestation conditions and no contact conditions pursuant to section 24 and 28 of the Domestic Violence Decree. The above domestic violence restraining order will be in force until this court or any other competence court is varied or suspended it. Furthermore, if you breached this restraining order, you will be charged and prosecuted for an offence pursuant to section 77 of the Domestic Violence Decree.
15. Thirty (30) days to appeal to the Fiji Court of Appeal.



  
R.D.R.T. Ragasinghe  
Judge

**At Suva**

07<sup>th</sup> February 2017

**Solicitors**

Office of the Director of Public Prosecutions for the State  
Office of the Legal Aid Commission for the Accused